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ARTHUR RENOWITZKY

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Attorneys for Defendants,  
Driscoll's Valencia Street Serra Mortuary and Sierra Enterprises, Inc

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

ARTHUR RENOWITZKY,

Plaintiff,

v.

DRISCOLL'S VALENCIA STREET  
SERRA MORTUARY; SIERRA  
ENTERPRISES, INC.,

Defendants.

Case No. 4:21-cv-02645-YGR  
Civil Rights

**CONSENT DECREE AND ~~PROPOSED~~  
ORDER FOR INJUNCTIVE RELIEF FOR  
INJUNCTIVE RELIEF, DAMAGES, AND  
ATTORNEY FEES, LITIGATION  
EXPENSES, AND COSTS**

Action Filed: April 13, 2021

1. Plaintiff ARTHUR RENOWITZKY filed a Complaint in this action on April 13, 2021, to enforce provisions of the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. §§ 12101 *et seq.*, and California civil rights laws and to obtain recovery of damages for discriminatory experiences, denial of access, and denial of civil rights against Defendants DRISCOLL'S VALENCIA STREET SERRA MORTUARY; SIERRA ENTERPRISES,

1 INC. Defendants appear and accept the jurisdiction of the Court for all purposes, including  
 2 execution and enforcement of this agreement. Plaintiff has alleged that Defendants violated  
 3 Title III of the ADA; Sections 51, 52, 54, 54.1, 54.3 and 55, of the California Civil Code, and  
 4 Health and Safety Code §§ 19953 *et. seq.* by failing to provide full and equal access to  
 5 patrons of the Funeral Parlor located at 1465 Valencia Street, San Francisco, California.

6 2. In order to avoid the costs, expense, and uncertainty of protracted litigation,  
 7 Plaintiff and Defendants (together sometimes the “Parties”) agree to entry of this Consent  
 8 Decree and Order to resolve all claims regarding injunctive relief, damages, and attorneys’  
 9 fees, litigation expenses and costs, raised in the Complaint without the need for protracted  
 10 litigation. Accordingly, the Parties agree to the entry of this Order without trial or further  
 11 adjudication of any issues of fact or law concerning Plaintiff’s claims for relief.

### 12 13 **JURISDICTION:**

14 3. The Parties to this Consent Decree and Order agree that the Court has  
 15 jurisdiction of this matter pursuant to 28 U.S.C. section 1331 for alleged violations of the  
 16 Americans with Disabilities Act of 1990, 42 U.S.C. sections 12101 *et seq.* and pursuant to  
 17 supplemental jurisdiction for alleged violations of California Civil Code sections 51, 54, and  
 18 54.1.

19 WHEREFORE, the Parties to this Consent Decree hereby agree and stipulate to the  
 20 Court’s entry of this Consent Decree and Order, which provide as follows:

### 21 22 **SETTLEMENT OF INJUNCTIVE RELIEF:**

23 4. This Order shall be a full, complete, and final disposition and settlement of  
 24 Plaintiff’s claims against Defendants for injunctive relief that have arisen out of the subject  
 25 Complaint.

26 5. The Parties agree and stipulate that the corrective work will be performed in  
 27 compliance with the standards and specifications for disabled access as set forth in the  
 28 California Code of Regulations, Title 24-2, and Americans with Disabilities Act Standards

1 for Accessible Design, unless other standards are specifically agreed to in this Consent  
2 Decree and Order.

3 a. **Physical Remedial Measures and Administrative Procedures:**

4 Defendants have agreed to and represent that they have remedied all  
5 access barriers within the restroom and the parking lot encountered by  
6 Plaintiff that gave rise to this suit.

7 b. Defendants represent that they are in the process of selling the  
8 property and shutting down the mortuary at the subject premises.  
9 Accordingly, when Defendants sell the property, Defendants shall  
10 supply a copy of the CASp report of Rick Holleran, attached as  
11 Exhibit A, to any successors in interest so that they may voluntarily  
12 choose or not choose, at their own discretion, to fix additional barriers  
13 detailed in that report.

14 c. **Timing:** If Defendants do not sell the property, and also do not cease  
15 operation of the mortuary on or before January 1, 2023, then  
16 Defendants agree to perform all additional remedial work specified the  
17 report on or before June 1, 2023. If Defendants either sell the property  
18 or operations of Driscoll's Valencia Street Serra Mortuary ceases at  
19 the subject facility, then Defendants will not be responsible for these  
20 additional repairs.

21 b. If unforeseen difficulties, including any delays in the permitting  
22 process or as a result of the building department, prevent Defendants  
23 from completing any of the agreed-upon injunctive relief, Defendants  
24 or their counsel will notify Plaintiff's counsel in writing within seven  
25 (7) days of discovering the delay. Plaintiff will have thirty (30) days  
26 to investigate and meet and confer with Defendants, and to approve the  
27 delay by stipulation or otherwise respond to Defendants' notice. If the  
28 Parties cannot reach agreement regarding the delay within that time



period, Plaintiff may seek enforcement by the Court.

c. Defendants or defense counsel will notify Plaintiff's counsel when the corrective work is completed, and, whether completed or not, will provide a status report to Plaintiff's counsel no later than June 1, 2023. Defendants agree to notify Plaintiff as to the date of any sale of the premises within 30 days of the sale.

d. If Defendants fail to provide injunctive relief on the agreed upon timetable and/or fail to provide timely written status notification, and Plaintiff files a motion with the Court to obtain compliance with these terms, Plaintiff reserves the right to seek additional attorney's fees for any compliance work necessitated by Defendants' failure to keep this agreement. If the Parties disagree, the parties agree to participate in a Magistrate Judge-conducted Settlement Conference for the purposes of resolving the disputed fees. If the Settlement Conference fails to resolve the fee dispute, Plaintiff may seek an order directing the Defendants to pay Plaintiff's reasonably incurred fees.

# **DAMAGES, ATTORNEYS' FEES, LITIGATION EXPENSES, AND COSTS:**

6. Defendants agree to pay Plaintiff a total of \$50,000 for Plaintiff's damages, attorney fees, litigation expenses, and costs. The damages, attorney fees, litigation expenses and costs shall be paid by two separate wire transfer to Plaintiff's Counsel's trust account payable to "REIN & CLEFTON IN TRUST FOR ARTHUR RENOWITZKY." The payment shall be wired to Plaintiff's counsel's IOLTA trust account on or before October 1, 2021. Plaintiff's counsel shall provide specific wiring instructions separately.

# **ENTIRE CONSENT DECREE AND ORDER:**

7. This Consent Decree and Order constitute the entire agreement between the signing Parties on the matters of injunctive relief, damages, attorneys' fees, litigation

1 expenses, and costs, and no other statement, promise, or agreement, either written or oral,  
 2 made by any of the Parties or agents of any of the Parties that is not contained in this written  
 3 Consent Decree and Order, shall be enforceable regarding the matters of injunctive relief  
 4 described herein.

5  
 6 **CONSENT DECREE AND ORDER BINDING ON PARTIES AND SUCCESSORS IN**  
 7 **INTEREST:**

8         8. This Consent Decree and Order shall be binding on Plaintiff, Defendants, and  
 9 any successors-in-interest. Defendants have a duty to so notify all such successors-in-interest  
 10 of the existence and terms of this Consent Decree and Order during the period of the Court's  
 11 jurisdiction of this Consent Decree and Order.

12  
 13 **MUTUAL RELEASE AND WAIVER OF CIVIL CODE SECTION 1542:**

14         9. Each of the Parties to this Consent Decree and Order understands and agrees  
 15 that there is a risk and possibility that, subsequent to the execution of this Consent Decree  
 16 and Order, any or all of them will incur, suffer, or experience some further loss or damage  
 17 with respect to the lawsuit that is unknown or unanticipated at the time this Consent Decree  
 18 and Order is signed. Except for all obligations required in this Consent Decree and Order, the  
 19 Parties intend that this Consent Decree and Order apply to all such further loss with respect  
 20 to the lawsuit, except those caused by the Parties subsequent to the execution of this Consent  
 21 Decree and Order. Therefore, except for all obligations required in this Consent Decree and  
 22 Order, this Consent Decree and Order shall apply to and cover any and all claims, demands,  
 23 actions, and causes of action by the Parties to this Consent Decree with respect to the lawsuit,  
 24 whether the same are known, unknown, or hereafter discovered or ascertained, and the  
 25 provisions of Section 1542 of the California Civil Code are hereby expressly waived. Section  
 26 1542 provides as follows:

27         **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS**  
 28         **THAT THE CREDITOR OR RELEASING PARTY DOES NOT**  
        **KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT**

1 **THE TIME OF EXECUTING THE RELEASE AND THAT, IF**  
2 **KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY**  
3 **AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR**  
4 **OR RELEASED PARTY.**

5 10. Except for all obligations required in this Consent Decree and Order each of the  
6 Parties to this Consent Decree and Order, on behalf of each, their respective agents,  
7 representatives, predecessors, successors, heirs, partners, and assigns, releases and forever  
8 discharges each other Party and all officers, directors, shareholders, subsidiaries, joint venturers,  
9 stockholders, partners, parent companies, employees, agents, attorneys, insurance carriers, heirs,  
10 predecessors, and representatives of each other Party, from all claims, demands, actions, and  
11 causes of action of whatever kind or nature, presently known or unknown, arising out of or in  
12 any way connected with the lawsuit.

13 **TERM OF THE CONSENT DECREE AND ORDER:**

14 11. This Consent Decree and Order shall be in full force and effect for a period of  
15 eighteen (18) months after the date of entry of this Consent Decree and Order by the Court.

16 **SEVERABILITY:**

17 12. If any term of this Consent Decree and Order is determined by any court to be  
18 unenforceable, the other terms of this Consent Decree and Order shall nonetheless remain in  
19 full force and effect.

20 **SIGNATORIES BIND PARTIES:**


21 13. Signatories on the behalf of the Parties represent that they are authorized to  
22 bind the Parties to this Consent Decree and Order. This Consent Decree and Order may be  
23 signed in counterparts and a facsimile signature shall have the same force and effect as an  
24 original signature.  
25

26 **END OF PAGE.**  
27 **SIGNATURES CONTINUE ON THE NEXT PAGE AND ORDER IS AT THE**  
28 **END OF THE DOCUMENT.**



1 Dated: 9/24, 2021

PLAINTIFF ARTHUR RENOWITZKY

2   
3 \_\_\_\_\_  
4 ARTHUR RENOWITZKY

5 Dated: \_\_\_\_\_, 2021

DEFENDANT DRISCOLL'S VALENCIA  
STREET SERRA MORTUARY

6  
7  
8 By: \_\_\_\_\_  
9 Print name: \_\_\_\_\_  
10 Title: \_\_\_\_\_

11 Dated: \_\_\_\_\_, 2021

DEFENDANT SIERRA ENTERPRISES, INC.

12  
13 By: \_\_\_\_\_  
14 Print name: \_\_\_\_\_  
15 Title: \_\_\_\_\_

15 Approved as to form:


16 Dated: 9/24, 2021

REIN & CLEFTON

17   
18 \_\_\_\_\_  
19 By: AARON M. CLEFTON, Esq.  
20 Attorneys for Plaintiff  
ARTHUR RENOWITZKY

21 Dated: 10/5, 2021

LAW OFFICE OF KATHERINE R. MOORE

22  
23   
24 \_\_\_\_\_  
25 By: KATHERINE R. MOORE, Esq.  
26 Attorneys for Defendants  
27 DRISCOLL'S VALENCIA STREET SERRA  
28 MORTUARY; SIERRA ENTERPRISES, INC.

1 Dated: \_\_\_\_\_, 2021

PLAINTIFF ARTHUR RENOWITZKY

2  
3  
4  
ARTHUR RENOWITZKY

5 Dated: 9-27, 2021

DEFENDANT DRISCOLL'S VALENCIA  
STREET SERRA MORTUARY

6  
7  
8 By: [Signature]  
9 Print name: Daniel M. Duggan  
10 Title: Funeral Director

11 Dated: 9-27, 2021

DEFENDANT SIERRA ENTERPRISES, INC.

12  
13 By: [Signature]  
14 Print name: Daniel M. Duggan  
15 Title: Officer

16 Approved as to form:

17 Dated: \_\_\_\_\_, 2021

REIN & CLEFTON

18  
19 By: AARON M. CLEFTON, Esq.  
Attorneys for Plaintiff  
ARTHUR RENOWITZKY

20  
21 Dated: \_\_\_\_\_, 2021

LAW OFFICE OF KATHERINE R. MOORE

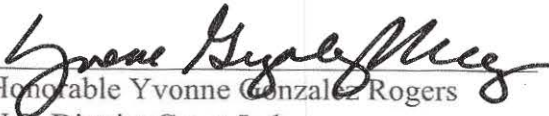
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25 By: KATHERINE R. MOORE, Esq.  
Attorneys for Defendants  
26 DRISCOLL'S VALENCIA STREET SERRA  
27 MORTUARY; SIERRA ENTERPRISES, INC.  
28



**ORDER**

Pursuant to stipulation, and for good cause shown, IT IS SO ORDERED.

Dated: October 13, 2021

  
Honorable Yvonne Gonzalez Rogers  
U.S. District Court Judge